

BEFORE THE BOARD OF REAL ESTATE APPRAISERS

STATE OF IDAHO

In the Matter of the License of:)	
)	Case No. REA-2008-77
Mr. Richard M. Bauer,)	
License No. CGA-180,)	STIPULATION AND
)	CONSENT ORDER
Respondent.)	
)	

WHEREAS, the Bureau of Occupational Licensing, acting as an agent of the Idaho State Board of Real Estate Appraisers (the "Board"), has received information that constitutes sufficient grounds for the initiation of an administrative action against Richard M. Bauer ("Respondent"); and

WHEREAS, the parties mutually agree to settle the matter in an expeditious manner in lieu of administrative hearings before the Board; now, therefore,

IT IS HEREBY STIPULATED AND AGREED between the undersigned parties that this matter shall be settled and resolved upon the following terms:

A. Stipulated Facts and Law

A.1. The Board regulates the practice of real estate appraising in the State of Idaho in accordance with title 54, chapter 41, Idaho Code.

A.2. The Board has issued License No. CGA-180 to Respondent. Respondent's license is subject to the provisions of title 54, chapter 41, Idaho Code and the Board's rules codified at IDAPA 24.18.01.000 *et seq.*

A.3. Appraisals in the State of Idaho must comply with the minimum standards set forth in the Uniform Standards of Professional Appraisal Practices ("USPAP").

A.4. On or about February 27, 2006, Respondent prepared a review appraisal of a February 18, 2006, appraisal (the "reviewed appraisal") that valued the subject property at \$1.8 million. Respondent's review appraisal did not note any problems with the

reviewed appraisal and his cover letter to the review appraisal stated that his review appraisal's purpose was to verify the accuracy of the factual data and conclusions and to determine the reasonableness of the value opinion contained in the reviewed appraisal and that "I have found the final opinion of market value for the subject property reasonable as of the effective date of the appraisal report under review." However, a copy of the review appraisal from Respondent's work file contained an Addendum that noted the following deficiencies with the reviewed appraisal:

1. Subject Dimensions – No plat map referenced or supplied.
2. Flood map and zone – incorrect.
3. Comp 1 finance was cash vs. conv.
4. Comp 1 lot size not provided.
5. Comp 2 sales price was listing price (Diff of +45,000).
6. Comp 4 sales price was listing price (Diff of + 90,000).
7. Comp 4 financing was cash vs. conv.
8. Comp 4 has multiple f/p not 1 as noted in report.
9. Comp 4 is noted having hot/tub – none within MLS.

Nevertheless, Respondent's review appraisal concluded that the errors did not materially affect the reviewed appraisals ultimate conclusions:

Number 1 above does not effect final value as all comparables are considered to be comparable.

Number 2 above does not effect final value, as same zone is within this market.

Number 3 above does not effect final value adversely.

Number 4 above does not effect final value as all comparables are considered to be townhouses and all are considered to be similar.

Number 5 above could have effected the final value which corrected would indicate adj value of 1,839,000.00 – still supporting market value.

Number 6 above could have effected the final value which corrected would indicate an adj value of 1,946,500 – still supporting market value.

Number 7 above does not effect final value adversely.

Number 8 above does have a minimal effect on value (-2000) on final value.

Number 9 above does have a minimal effect on value (+5000) on final value.

Conclusions:

With the above 9 errors found within this appraisal report, the final value is still well supported.

(Reformatted from original; misuse of “effect” for “affect” in original.)

A.5. Respondent’s February 27, 2006, review appraisal report for the Subject Property failed to meet the following requirements of applicable USPAP Standards (2005):¹

a. Ethics Rule, Recordkeeping:

i. Respondent’s work file showed 2005 taxes for the subject property, but the reviewed appraisal showed 2003 taxes. Check marks on Respondent’s MLS data sheets indicated that Respondent discovered discrepancies between “list price and sale price” on the reviewed appraisal’s comparables. These errors were not disclosed in the review appraisal, and they are relevant.

ii. No land sales analysis was found in Respondent’s work file. No current or prior listing or sales history on the subject property was contained in Respondent’s work file. This missing information was important because the subject was listed for sale for \$1,395,000 at the times of the reviewed appraisal and review appraisal.

iii. Respondent’s work file was incomplete and did not show due diligence to research and analyze the subject’s marketing area and to verify important data for the subject property and the comparable sales.

iv. Respondent discovered errors in the reviewed appraisal that were not disclosed in the review appraisal.

b. Competency Rule: The review appraisal demonstrated a lack of knowledge of the area.

¹ On February 22, 2006, the Board’s adoption of the 2005 edition of USPAP was in effect. See IDAPA 24.18.01.004 (2005) (effective 4/6/05-4/10/06).

i. The reviewed appraisal:

- contained generic descriptions and comments about the area;
- did not accurately describe the subject location, neighborhood build-up, value ranges, housing trends, or present land use break down;
- had incorrect sale prices for two of the four comparables;
- did not disclose the then-current listing history of the subject property;
- used 2003 taxes rather than 2005;
- significantly understated HOA dues; and
- omitted maps.

The review appraisal did not comment upon these errors and omissions.

ii. Respondent's work file had no market research to determine if the four sales used in the reviewed appraisal were truly comparable to the subject. There were three then-current sales in the subject's immediate development that were available at the times of the reviewed appraisal and Respondent's review appraisal that would have produced a much lower value estimate for the subject property.

iii. The review appraisal's unsupported statements, generic comments and lack of market research created a very misleading review appraisal.

c. Standards Rules 1-1(a), (b) and (c): The reviewed appraisal used 2003 taxes and HOA assessments when 2005 figures were available. The reviewed appraisal incorrectly reported the subject's prior sales history. The reviewed appraisal did not disclose then current listing information. Respondent's review appraisal had no comments concerning the generic comments found in the reviewed appraisal. The reviewed appraisal did not include a plat map, incorrectly reported zoning, and incorrectly stated flood zone information. The reviewed appraisal had no support for its statements concerning the subject's "superior design and finest quality materials and finishes available." The review appraisal did not explain Respondent's comments in the Supplemental Addendum and did not include data that would support the adjustments

used in the reviewed appraisal. Respondent merely stated, "The information provided in the original appraisal report is complete and accurate."

d. Standards Rules 1-4(a) and (b) and 1-6(a) and (b):

i. Comparable Sales Analysis. Sales in the reviewed appraisal's Sales Comparison Analysis were not comparable to the subject property. Respondent's work file did not show attempts to verify sales data with the listing or selling agents or attempts to research the market for additional sales data. List Prices rather than Sales Prices were used on two of the reviewed appraisal's sales, and Respondent disclosed this information only in the Addendum. Respondent failed to comment that Sale #1 was in a condominium project rather than a townhouse development and may not appeal to the same buyer. The reviewed appraisal used the list price rather than the sales price for Sale #2, which was much larger than the subject and sold fully furnished. In the reviewed appraisal Sale #3 was significantly larger than the subject, had more bedrooms and baths, and was superior in interior and exterior finish. The reviewed appraisal used asking price rather than sales price for Sale #4, which was not comparable in gross living area, room count, location or building style. The reviewed appraisal's adjustments were not market supported, and sales in its Sales Comparison Analysis were not the most similar properties available as of the date of the appraisal.

ii. Subject Property History. The subject property was purchased on 11/21/03 for \$825,000, which was incorrectly reported in the reviewed appraisal. The subject was listed for sale from 12/22/05 to 4/14/06 for \$1,395,000; Respondent failed to report this information in the review appraisal. These data would have been available if Respondent had confirmed sales data through the local real estate agents and/or asked local agents about other listing or sales in the subject's immediate area.

iii. Cost Approach. Data in the reviewed appraisal's Cost Approach appear to have been developed to support the Sales Comparison Analysis. The site value was not supported in the review appraisal or in Respondent's work file. The

patio and fence value of \$50,000 and Site Improvements of \$300,000 were not supported. Neither the review appraisal nor Respondent's work file described steps Respondent took to collect, verify and analyze all information necessary for credible review appraisal.

e. Standards Rules 2-1(a), (b) and (c): Respondent failed to recognize or disclose numerous errors and omissions in the reviewed appraisal, creating a review appraisal that was incomplete and misleading. Respondent also showed a lack of competency and knowledge of the area by not recognizing differences in the sales used in the reviewed appraisal and other sales data that were available in the area.

f. Reconciliation: The subject property's area is difficult to appraise. A fence line can make the difference between a \$1 million property and a \$3 million property. Generic comments and lack of neighborhood- and subject-specific comments showed a lack of competence on the part of the original appraiser and Respondent to recognize critical components of value in the area. Comments on the review appraisal's Addendum also showed a lack of competence because Respondent did not recognize many errors and omissions in the reviewed appraisal: The properties used in the reviewed appraisal were not comparable to the subject property. The adjustments made to the sales in the reviewed appraisal were not market supported. Respondent did not provide additional, comparable sales data. The work file was incomplete. Respondent did not research, verify and analyze market data in a manner to support the conclusions in the review appraisal. By agreeing with the original report, Respondent accepted the responsibility of a cosigner of the report and was in violation of USPAP Standards.

A.6 The allegations of Paragraphs A.4 through A.5, if proven, would violate the laws and rules governing the practice of real estate appraising, specifically Idaho Code § 54-4107(e) and IDAPA 24.18.01.700. Violations of these laws and rules are grounds for disciplinary action against Respondent's license to practice real estate appraising in the State of Idaho.

B. Waiver of Procedural Rights

I, Richard M. Bauer, by signing this document, acknowledge that:

B.1. I have read, understand and admit the allegations pending before the Board, as stated in Section A, Paragraphs A.1 through A.6. I further understand that these allegations constitute cause for disciplinary action upon my license to practice real estate appraising in the State of Idaho.

B.2. I understand that I have the right to a full and complete hearing; the right to confront and cross-examine witnesses; the right to present evidence or to call witnesses, or to testify myself; the right to reconsideration of the Board's orders; the right to judicial review of the Board's orders; and all rights accorded by the Administrative Procedure Act of the State of Idaho and the laws and rules governing the practice of real estate appraisal in the State of Idaho. I hereby freely and voluntarily waive these rights in order to enter into this Stipulation as a resolution of the pending allegations.

B.3. I understand that in signing this Stipulation I am enabling the Board to impose disciplinary action upon my license without further process.

C. Stipulated Discipline

C.1. Respondent shall pay to the Board an administrative fine in the amount of Seven Hundred and Fifty and No/100 Dollars (\$750.00) within thirty (30) days of the entry of the Board's Order.

C.2. Respondent shall pay investigative costs and attorney fees in the amount of One Thousand Six Hundred Twelve and No/100 Dollars (\$1,612.00) within thirty (30) days of the entry of the Board's Order.

C.3. Within nine (9) months of the date of Respondent's signature on this Stipulation and Consent Order, Respondent shall obtain the following continuing education from Board-approved providers:

- a. A 15-classroom-hour² National USPAP course; **and**
- b. A seven-hour course for reviewing residential appraisals.

Respondent shall submit proof of attendance, as well as proof of passing any test(s) given in the course(s), to the Board within 30 days of attendance of each continuing education course. This continuing education shall be in addition to any continuing education Respondent is required to obtain to maintain his license.

C.4. Respondent's License No. CGA-180 shall be placed on probation for a period of nine (9) months from the date of entry of the Board's Order. The conditions of probation are as follows:

- a. Respondent shall comply with all state, federal and local laws, rules and regulations governing the practice of real estate appraising in the State of Idaho.
- b. Respondent shall inform the Board in writing of any change of place of practice or place of business within 15 days of such change.
- c. If Respondent leaves Idaho for three (3) continuous months, or resides or practices outside of the state, Respondent must notify the Board in writing of the dates of departure, address of intended residence or place of business, and whether Respondent intends to return. Periods of time spent outside Idaho will not apply to satisfy

² Classroom hours as used in this Stipulation and Consent Order and in the Rules of the Real Estate Appraiser's Board, IDAPA 24.18.01.000 *et seq.*, includes instruction in which:

- (a) the appraiser taking the class and the instructor are physically present in the same location at the same time (traditional classroom hours), or
- (b) the appraiser taking the class and the instructor are connected at the same time through videoconferencing or a similar technology, the appraiser taking the class is present in the same location with other appraisers taking the class, and the facilities are set up for interactive two-way communication between the instructor and the appraisers taking the class that allows questions to be posed by appraisers taking the class and answered by the instructor during the class (interactive distance learning classroom hours).

Classroom hours do not include on-line courses in which the appraiser taking the class is at a remote location from the other appraisers taking the class or in which the appraiser taking the class is not able to pose questions to the instructor and receive answers in real time. When a test is given in any classroom instruction, Respondent must take the test and provide proof to the Board that Respondent has passed the test.

this probationary period or excuse compliance with the terms of this Stipulation.

d. Respondent shall fully cooperate with the Board and its agents, and shall make all relevant files, records, correspondence or other documents available immediately upon the demand of any member of the Board and its agents.

C.5. At the conclusion of the 9-month probationary period, provided Respondent has complied with all other terms of this Stipulation, Respondent may request the Board to terminate the conditions of probation. Any request for termination of probation must be accompanied by written proof of compliance with the terms of this Stipulation.

C.6. All costs associated with compliance with the terms of this Stipulation are the sole responsibility of Respondent.

C.7. Respondent's violation of any terms of this Stipulation may warrant further Board action. The Board retains jurisdiction over this proceeding until all matters are finally resolved as set forth in this Stipulation.

D. Presentation of Stipulation to Board

D.1. The Board's prosecutor shall present this Stipulation to the Board with a recommendation for approval.

D.2. The Board may accept, modify with Respondent's approval, or reject this Stipulation. If the Board rejects the Stipulation, an administrative Complaint may be filed with the Board. Respondent waives any right Respondent may have to challenge the Board's impartiality to hear the allegations in the administrative Complaint based on the fact that the Board has considered and rejected this Stipulation. Respondent does not waive any other rights regarding challenges to Board members.

D.3. If the Board rejects this Stipulation then, except for Respondent's waiver set forth in Paragraph D.2., this Stipulation shall be regarded as null and void, and admissions in this Stipulation and negotiations preceding the signing of this Stipulation will not be admissible at any subsequent disciplinary hearing.

D.4. Except for Paragraph D.2. which becomes effective when Respondent signs this Stipulation, this Stipulation shall not become effective until it has been approved by a majority of the Board and a Board member signs the attached Order.

E. Violation of Stipulation and Consent Order

E.1. If Respondent violates this Stipulation and Consent Order, the violation may be considered grounds for additional discipline and the Board may impose additional discipline pursuant to the following procedure:

a. The Chief of the Bureau of Occupational Licenses shall schedule a hearing before the Board to assess whether Respondent has violated this Stipulation and Consent Order. The Chief shall also serve notice of the hearing and charges to Respondent and to Respondent's attorney, if any. Within fourteen (14) days after the notice of the hearing and charges is served, Respondent may submit a response to the allegations. If Respondent does not submit a timely response to the Board, the alleged violations will be deemed admitted.

b. At the hearing, the Board and Respondent may submit evidence and present oral argument based upon the record in support of their positions. Unless otherwise ordered by the Board, the evidentiary record before the Board shall be limited to evidence relevant to whether Respondent has violated this Stipulation and Consent Order. At the hearing the facts and substantive matters related to the violations described in Section A shall not be at issue.

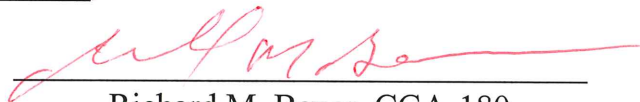
c. At the hearing, the Board may impose additional discipline, which may include the suspension or revocation of Respondent's license, the imposition of fines, the recovery of costs and attorney fees incurred by the Board and/or other conditions or limitations upon Respondent's practice.

E.2. This Stipulation and Consent Order is the resolution of a contested case and is a public record.

E.3. This Stipulation contains the entire agreement between the parties, and Respondent is not relying on any other agreement or representation of any kind, verbal or otherwise.

I have read the above Stipulation fully and have had the opportunity to discuss it with legal counsel. I understand that by its terms I am waiving certain rights accorded me under Idaho law. I understand that the Board may either approve this Stipulation as proposed, approve it subject to specified changes, or reject it. I understand that, if approved as proposed, the Board will issue an Order on this Stipulation according to the aforementioned terms, and I hereby agree to the above Stipulation for settlement. I understand that if the Board approves this Stipulation subject to changes, and the changes are acceptable to me, the Stipulation will take effect and an order modifying the terms of the Stipulation will be issued. If the changes are unacceptable to me or the Board rejects this Stipulation, it will be of no effect.

DATED this 11 day of September, 2009.



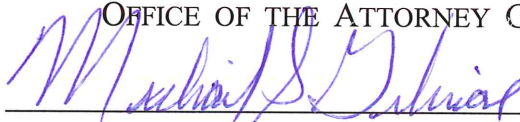
Richard M. Bauer, CGA-180
Respondent

I recommend that the Board enter an Order based upon this Stipulation.

DATED this 15th day of September, 2009.

STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL



By Michael S. Gilmore

Deputy Attorney General

ORDER

Pursuant to Idaho Code § 54-4106(2)(h), the foregoing is adopted as the decision of the Board of Real Estate Appraisers in this matter and shall be effective on the 19 day of October, 2009. IT IS SO ORDERED.

IDAHO STATE BOARD
OF REAL ESTATE APPRAISERS


By Rick A. Bachmeier, Chair

Paul Morgan Vice

CERTIFICATE OF SERVICE

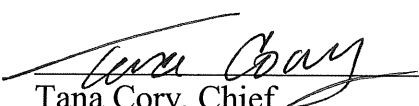
I HEREBY CERTIFY that on this 19th day of October, 2009, I caused to be served a true and correct copy of the foregoing by the following method to:

Richard M Bauer
PO Box 2006
Twin Falls, Idaho 83303

- ☒ U.S. Mail
- ☐ Hand Delivery
- ☒ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: _____
- ☐ Statehouse Mail

Michael S. Gilmore
Deputy Attorney General
P.O. Box 83720
Boise, ID 83720-0010

- ☐ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: _____
- ☒ Statehouse Mail


Tana Cory, Chief
Bureau of Occupational Licenses